

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JULIE ANN ROEHM,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

CASE NO. 2:07-cv-10168

Judge Lawrence P. Zatkoff
Mag. Judge R. Steven Whalen

**MOTION FOR
LEAVE TO FILE COUNTERCLAIM**

Defendant Wal-Mart Stores, Inc. ("Wal-Mart" or the "Company"), for the reasons stated in its supporting brief, hereby moves pursuant to Rule 13, Fed. R. Civ. P., for leave to file the appended counterclaim.

Respectfully submitted,

DYKEMA GOSSETT PLLC

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DATE: March 19, 2007

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**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE COUNTERCLAIM**

Defendant Wal-Mart Stores, Inc. ("Wal-Mart" or the "Company") respectfully submits this brief in support of its motion for leave to file counterclaim.

On January 31, 2007, the parties entered into a stipulation providing for certain expedited discovery in the above matter in order to allow Wal-Mart to evaluate the potential of certain possible counterclaims. On February 23, 2007, the parties filed the Report of Rule 26(f) Conference and Discovery Plan ("Rule 26(f) Report") in the above matter. In that report, the parties agreed to request a scheduling order permitting amendments to the pleadings by April 15, 2007. Rule 26(f) Report at 3 ("The parties request that the following be entered by the Court as a Scheduling Order: . . . Any amendments to the pleadings (including addition of new parties) must be filed by April 15, 2007.") The Court has not yet entered a Scheduling Order in the case, although a Scheduling Conference is set for April 17, 2007. Wal-Mart has continued its investigation of the facts, and is now in a position to file its counterclaim.

Rule 13, Fed. R. Civ. P., governs the filing of counterclaims. Based on the stipulation of the parties, the early stage of the proceedings and the absence of prejudice to Plaintiff, Wal-Mart requests leave of court to file the appended counterclaim. *See generally Budd Co. v. Travelers*

Indem. Co., 820 F.2d 787, 791-92 (6th Cir. 1987) (noting that leave to amend under Rule 13 should be freely granted). The equities all weigh in favor of granting the request. *Id.* (district court must balance the equities, including whether the non-moving party will be prejudiced, whether additional discovery will be required and whether the court's docket will be strained).

Counsel certifies that, pursuant to Local Rule 7.1, the concurrence of opposing counsel has previously been given, as memorialized in the Rule 26(f) Report quoted above and filed with the Court. Pursuant to Local Rule 15.1, the proposed counterclaim is appended to this motion.

Accordingly, Wal-Mart requests leave of the Court for the filing of its counterclaim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2007, I electronically filed the foregoing Motion and Brief for Leave to File Counterclaim with the Clerk of the Court using the ECF system which will send notification of such filing to the following: John F. Schaefer (P19948) at bar@lfjfs.com and B. Andrew Rifkin (P46147) at bar@lfjfs.com.

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